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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057061
Party	Defendant Andrey A. Agapov
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com
Submission	Motion for Summary Judgment
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Date	06/10/2014
Attachments	Motion for Judgment.pdf(172106 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Reg. No. 4,168,773
For the mark IT'S ON ME,
Registered on the Official Registry June 19, 2012

GIFTBOARD, INC.,

Petitioner,

vs.

MR. ANDREY A. AGAPOV,

Registrant.

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Cancellation No. 92057061

MOTION FOR JUDGMENT

COMES NOW the Registrant, Andrey A. Agapov (hereinafter "Registrant"), by and through counsel, The Trademark Company, PLLC, and files the instant Motion for Judgment pursuant to 37 C.F.R. § 2.132(a). In support of said motion Applicant provides as follows:

STATEMENT OF THE CASE

1. On or about October 19, 2011 Registrant submitted an application to register the mark IT'S ON ME with the U.S. Patent and Trademark Office (hereinafter "USPTO").
2. The USPTO assigned the application Serial No. 85/451,491.
3. The application was published for opposition on or about April 3, 2012.
4. Registrant's application for the mark IT'S ON ME registered on or about June 19, 2012 on the Principal Register and received U.S. Registration No. 4,160,773.
5. On or about April 15, 2013 Giftboard, Inc. (hereinafter "Petitioner") instituted the instant cancellation proceeding.
6. On or about May 9, 2013 Registrant timely filed his Answer and Grounds of Defense to the allegations contained in the Petition to Cancel.

7. On or about June 26, 2013 Petitioner filed an Amended Petition for Cancellation.
8. On or about July 11, 2013 Registrant timely filed his Answer and Grounds of Defense to the allegations contained in the Amended Petition for Cancellation.
9. On or about April 12, 2014 Petitioner's 30-day trial period opened. On May 12, 2014 Petitioner's 30-day trial period closed. During its trial period Petitioner failed to submit even one scintilla of evidence in support of the instant Petition to Cancel.

ARGUMENT

A Registrant in the position of a defendant may appropriately file a motion for judgment directed to the sufficiency of the trial evidence of a Petitioner in the position of a plaintiff where the plaintiff / Petitioner's testimony period has passed and the plaintiff / Petitioner has not taken testimony or offered any evidence to support its case. 37 CFR § 2.132(a) In such a situation, the defendant / Registrant may, without waiving its right to offer evidence in the event the motion is denied, move for dismissal for failure of the plaintiff / Petitioner to prosecute. See generally *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991) (Board did not abuse discretion in denying motion to reopen testimony and dismissing proceeding on motion to dismiss where plaintiff submitted no evidence and failed to make a prima facie case); *Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542, 1544 (TTAB 2001) (motion to extend testimony period denied; motion to dismiss granted); *SFW Licensing Corp. and Shoppers Food Warehouse Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1374 (TTAB 2001) (same); *Atlanta Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858 (TTAB 1998) (motion to reopen discovery and testimony periods denied, motion to dismiss granted).

The purpose of the motion under 37 CFR § 2.132(a) is to save the Registrant / defendant the expense and delay of continuing with the trial in those cases where Petitioner / plaintiff has failed to offer any evidence during its testimony period. 37 CFR § 2.132(a)

It is suggested most dispositive of the instant matter, Petitioner failed to submit even one scintilla of evidence to the Board during its trial period. It is thus respectfully submitted to the Board that this case is the exact case envisioned by 37 CFR § 2.132(a) and its purpose of saving the defendant / Registrant the expense and delay of continuing with the trial in those cases where plaintiff / Petitioner has failed to offer any evidence during its testimony period.

Thus, it is respectfully submitted to the Board that the instant matter is ripe to be decided against the Petitioner under 37 CFR § 2.132(a) and that an order of dismissal, with prejudice, be entered by the Board.

WHEREFORE for the premises considered, Registrant Andrey A. Agapov, by counsel, respectfully moves the Board for an order of dismissal, with prejudice, of the instant matter pursuant to 37 CFR § 2.132(a) for the Petitioner's failure to prosecute the instant matter and, ultimately, its failure to submit any evidence whatsoever in support of its case during its trial period.

Respectfully submitted this 10th day of June, 2014.

THE TRADEMARK COMPANY, PLLC

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Cancellation No. 92057061

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 10th day of June, 2014, to
be served, via first class mail, postage prepaid, upon:

Douglas Burda, Esq.
Burda IP
PO BOX 1532
La Jolla, CA 92038

/Matthew H. Swyers/
Matthew H. Swyers